

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Crl.MC.No. 2449 of 2007()

ST.517/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY

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PETITIONER: 5TH ACCUSED:

DR. ANWAR HABEEB,
S/O. C.K. MOHAMMED HABEEBULLA, 'FIRDHOUSE',
WADAKKANCHERRY, TRISSUR DISTRICT.

BY ADV. SRI.ANIL THOMAS(T)
SMT.K.V.RESHMI

RESPONDENTS: COMPLAINANT/STATE:

1. THE SUB INSPECTOR OF POLICE,
KANJIRAPPALLY POLICE STATION.
2. THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.
3. T.K. KURIAN, S/O. KURIAN,
THUNDIYIL HOUSE, ANTHAYAR KARA, KANIRAPALLY TALUK.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
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Crl.M.C. No.2449 Of 2007
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Dated this the 31st day of July, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instrument Act. He is the 5th accused. The petitioner is employed abroad and consequently he was not able to appear before the learned Magistrate. Consequent to non appearance of the petitioner, the learned Magistrate has issued coercive processes against the petitioner. He has now come back to India. He is willing to surrender before the learned Magistrate. According to the petitioner the omission/failure of petitioner to appear earlier was not wilful and was on account of reasons beyond his control. The petitioner is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further prays that appropriate directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not

consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

3. This Crl.M.C. is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE